UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSE LEONEL HERNANDEZ and YUDELKA GARCIA, on behalf of themselves and all others similarly situated,

Plaintiffs,

- against -

RAMON FERNANDEZ, individually, 791 BOHIO RESTAURANT INC., EL BOHIO TREMONT RESTAURANT, CORP., TREMONT RESTAURANT CORP. d/b/a El Bohio Restaruant and El Nuevo Bohio Restaruant

Defendants.

14-CV-652 (VSB)

ORDER

Appearances:

Alexander Todd Coleman
Anthony Patrick Malecki
Michael John Borrelli
Law Offices of Borrelli & Associates
Great Neck, NY 11021
Counsel for Plaintiffs

Argilio Rodriguez
Rodriguez Law, P.C
New York, NY 10010

Martin E. Restituyo
Law Offices of Martin E. Restituyo, P.C.
New York, NY 10105
Counsel for Defendants

VERNON S. BRODERICK, United States District Judge:

Plaintiffs Jose Leonel Hernandez and Yudelka Garcia bring claims against Defendants

Ramon Fernandez, 791 Bohio Restaurant Inc., El Bohio Tremont Restaurant, Corp., and Tremont Restaurant Corp. for violations of the Fair Labor Standards Act of 1938 (the "FLSA"), 29 U.S.C. § 201 *et seq.* and New York Law, N.Y. Lab. Law §§ 196-d, 650 *et seq.*, N.Y. Comp. Codes R. & Regs. tit. 12 § 142-2.2. Plaintiffs initiated this action by complaint filed January 31, 2014, (Doc. 1), and subsequently amended their complaint on April 29, 2014, (Doc. 18), and June 16, 2014, (Doc. 32).

Before the Court is Plaintiffs' motion for conditional certification and notice pursuant to 29 U.S.C. § 216(b). (Docs. 41-43, 65-66.) For the reasons stated on the record during the April 21, 2015 conference, Plaintiffs' motion is GRANTED, because Plaintiffs have made the modest factual showing required at this stage of the proceedings demonstrating that potential class members are similarly situated.

The parties are directed to provide me with a joint proposed notice on or before May 1, 2015 that reflects, among other things, the following rulings: (1) the opt-in plaintiffs may include "non-managerial" employees of Defendants; (2) the notice shall be sent to the "non-managerial" employees employed by Defendants during the three year period prior to the date of the original Complaint, January 31, 2014; and (3) the notice and consent form shall require opt-in plaintiffs to consent to join the collective action within 60 days of the notice mailing date.

If, after discovery, the proposed class action includes non-exempt and exempt employees from the FLSA's requirements, I will consider a narrower class at that time. *See Romero v. H.B. Auto. Grp., Inc.*, No. 11-CV-386, 2012 WL 1514810, at *12 (S.D.N.Y. May 1, 2012). In addition, I make no findings with regard to the applicability of equitable tolling, and challenges to the timeliness of an individual plaintiff's action can be made at a later date. *See Fasanelli v. Heartland Brewery, Inc.*, 516 F. Supp. 2d 317, 323 & n.3 (S.D.N.Y. 2007) (allowing notice to be

sent to employees who worked for defendants at any point within three years of filing of complaint but recognizing that challenges could later be entertained regarding timeliness of claims of certain opt-ins); *Thompson v. World Alliance Fin. Corp.*, No. 08-CV-4951, 2010 WL 3394188, at *7 (E.D.N.Y. Aug. 20, 2010) (permitting plaintiffs to notify potential members employed within three years of filing complaint, but declining to rule on equitable tolling until later date).

The Clerk of the Court is respectfully requested to terminate the pending motion, (Doc. 41).

SO ORDERED.

Dated: April 22, 2015
New York, New York

Vernon S. Broderick
United States District Judge